

CENTER FOR DISABILITY ACCESS
Chris Carson, Esq., SBN 280048
Raymond Ballister Jr., Esq., SBN 111282
Phyl Grace, Esq., SBN 171771
Dennis Price, Esq., SBN 279082
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Shonna Counter,

Plaintiff,

v.

South Coast Plaza, a California
Corporation;
Ruby's Diner South Coast Plaza, a
California Limited Partnership;
Ruby's Diner, Inc., a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Shonna Counter complains of South Coast Plaza, a California Corporation; Ruby's Diner South Coast Plaza, a California Limited Partnership; Ruby's Diner, Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. She suffers from spinal muscular atrophy. Plaintiff drives a van that has a handicap placard

1 issued by the state of California. She uses both a walker and wheelchair for
2 mobility.

3 2. Defendant South Coast Plaza owned the real property located at or
4 about 3333 Bear Street, Costa Mesa, California, in December 2018.

5 3. Defendant South Coast Plaza owns the real property located at or about
6 3333 Bear Street, Costa Mesa, California, currently.

7 4. Defendants Ruby's Diner South Coast Plaza and Ruby's Diner, Inc.
8 owned Ruby's Diner located at or about 3333 Bear Street, Costa Mesa,
9 California, in December 2018.

10 5. Defendants Ruby's Diner South Coast Plaza and Ruby's Diner, Inc. own
11 Ruby's Diner ("Restaurant") located at or about 3333 Bear Street, Costa Mesa,
12 California, currently.

13 6. Plaintiff does not know the true names of Defendants, their business
14 capacities, their ownership connection to the property and business, or their
15 relative responsibilities in causing the access violations herein complained of,
16 and alleges a joint venture and common enterprise by all such Defendants.
17 Plaintiff is informed and believes that each of the Defendants herein,
18 including Does 1 through 10, inclusive, is responsible in some capacity for the
19 events herein alleged, or is a necessary party for obtaining appropriate relief.
20 Plaintiff will seek leave to amend when the true names, capacities,
21 connections, and responsibilities of the Defendants and Does 1 through 10,
22 inclusive, are ascertained.

23
24 **JURISDICTION & VENUE:**

25 7. The Court has subject matter jurisdiction over the action pursuant to 28
26 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
27 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

28 8. Pursuant to supplemental jurisdiction, an attendant and related cause

1 of action, arising from the same nucleus of operative facts and arising out of
2 the same transactions, is also brought under California's Unruh Civil Rights
3 Act, which act expressly incorporates the Americans with Disabilities Act.

4 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
5 founded on the fact that the real property which is the subject of this action is
6 located in this district and that Plaintiff's cause of action arose in this district.

7
8 **FACTUAL ALLEGATIONS:**

9 10. Plaintiff went to the Restaurant in December 2018 to eat.

10 11. The Restaurant is a facility open to the public, a place of public
11 accommodation, and a business establishment.

12 12. Maneuvering clearances in the restroom are one of the facilities,
13 privileges, and advantages offered by Defendants to patrons of the Restaurant.

14 13. Unfortunately, the Restaurant placed a large trash can inside the
15 women's restroom, such that it blocked the plaintiff from exiting the restroom
16 without great difficulty.

17 14. There was a front approach to the pull side of the swinging exit door on
18 the day of plaintiff's visit but there were only a few inches of clearance to the
19 strike side of the door because the defendants placed the trash can next to the
20 door.

21 15. Restrooms are another one of the facilities, privileges, and advantages
22 offered by Defendants to patrons of the Restaurant.

23 16. The plumbing underneath the sink was not wrapped to protect against
24 burning contact.

25 17. The coat hook was mounted at a height of 72 inches and was not
26 effectively useable by plaintiff.

27 18. Currently, the plumbing underneath the sink is not wrapped to protect
28 against burning contact.

1 19. Currently, the coat hook is mounted at a height of 72 inches and is not
2 effectively useable by plaintiff and other wheelchair users.

3 20. Defendants have failed to maintain in operable working condition those
4 features of facilities and equipment that are required to be readily accessible to
5 and usable by persons with disabilities at the Subject Property.

6 21. Plaintiff personally encountered these barriers.

7 22. This inaccessible facility denied the plaintiff full and equal access and
8 caused her difficulty, discomfort, and embarrassment.

9 23. Plaintiff will return to the Restaurant to avail herself of its goods or
10 services once the barriers are permanently removed. If the barriers are not
11 removed, the plaintiff will face unlawful and discriminatory barriers again.

12 24. The defendants have failed to maintain in working and useable
13 conditions those features required to provide ready access to persons with
14 disabilities.

15 25. The barriers identified above are easily removed without much
16 difficulty or expense. They are the types of barriers identified by the
17 Department of Justice as presumably readily achievable to remove and, in fact,
18 these barriers are readily achievable to remove.

19 26. Insulation can be installed under the sink at a cost of no more than \$25.

20 27. Given the obvious and blatant nature of the barriers and violations
21 alleged herein, the plaintiff alleges, on information and belief, that there are
22 other violations and barriers on the site that relate to her disability. Plaintiff
23 will amend the complaint, to provide proper notice regarding the scope of this
24 lawsuit, once she conducts a site inspection. However, please be on notice that
25 the plaintiff seeks to have all barriers related to her disability remedied. See
26 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
27 encounters one barrier at a site, she can sue to have all barriers that relate to
28 her disability removed regardless of whether she personally encountered

1 them).

2

3 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 4 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 5 Defendants.) (42 U.S.C. section 12101, et seq.)

6 28. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 7 again herein, the allegations contained in all prior paragraphs of this
 8 complaint.

9 29. Under the ADA, it is an act of discrimination to fail to ensure that the
 10 privileges, advantages, accommodations, facilities, goods and services of any
 11 place of public accommodation is offered on a full and equal basis by anyone
 12 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 13 § 12182(a). Discrimination is defined, inter alia, as follows:

- 14 a. A failure to make reasonable modifications in policies, practices,
 15 or procedures, when such modifications are necessary to afford
 16 goods, services, facilities, privileges, advantages, or
 17 accommodations to individuals with disabilities, unless the
 18 accommodation would work a fundamental alteration of those
 19 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 20 b. A failure to remove architectural barriers where such removal is
 21 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 22 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 23 Appendix “D.”
- 24 c. A failure to make alterations in such a manner that, to the
 25 maximum extent feasible, the altered portions of the facility are
 26 readily accessible to and usable by individuals with disabilities,
 27 including individuals who use wheelchairs or to ensure that, to the
 28 maximum extent feasible, the path of travel to the altered area and

1 the bathrooms, telephones, and drinking fountains serving the
2 altered area, are readily accessible to and usable by individuals
3 with disabilities. 42 U.S.C. § 12183(a)(2).

4 30. When an entrance or exit requires a front approach to the pull side of a
5 swinging door, there must be a minimum of 18 inches clear floor space to the
6 strike side of the doorway. 2010 Standards § 404.2.4.1.

7 31. Here, the failure to provide that strike side clearance is a violation.

8 32. Hot water and drain pipes under lavatories must be insulated or
9 otherwise configured to protect against contact. 2010 Standards § 606.5.

10 33. Here, the failure to wrap the plumbing underneath the sink is a violation
11 of the ADA.

12 34. Under the 2010 Standards, the maximum height is 48 inches. 2010
13 Standards § 308.3.

14 35. Here, the coat hook is mounted beyond the maximum height
15 requirements in violation of the law.

16 36. A public accommodation must maintain in operable working condition
17 those features of its facilities and equipment that are required to be readily
18 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

19 37. Here, the failure to ensure that the accessible facilities were available
20 and ready to be used by the plaintiff is a violation of the law.

21 38. Given its location and options, plaintiff will continue to desire to
22 patronize the Restaurant but she has been and will continue to be
23 discriminated against due to the lack of accessible facilities and, therefore,
24 seeks injunctive relief to remove the barriers.
25
26
27
28

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 3 Code § 51-53.)

4 39. Plaintiff repleads and incorporates by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 7 that persons with disabilities are entitled to full and equal accommodations,
 8 advantages, facilities, privileges, or services in all business establishment of
 9 every kind whatsoever within the jurisdiction of the State of California. Cal.
 10 Civ. Code § 51(b).

11 40. The Unruh Act provides that a violation of the ADA is a violation of the
 12 Unruh Act. Cal. Civ. Code, § 51(f).

13 41. Defendants’ acts and omissions, as herein alleged, have violated the
 14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
 15 rights to full and equal use of the accommodations, advantages, facilities,
 16 privileges, or services offered.

17 42. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 18 discomfort or embarrassment for the plaintiff, the defendants are also each
 19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 20 (c).)

21
 22 **PRAYER:**

23 Wherefore, Plaintiff prays that this Court award damages and provide
 24 relief as follows:

25 1. For injunctive relief, compelling Defendants to comply with the
 26 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
 27 plaintiff is not invoking section 55 of the California Civil Code and is not
 28 seeking injunctive relief under the Disabled Persons Act at all.

1 2. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 per occasion.

3 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5
6 Dated: January 15, 2019

CENTER FOR DISABILITY ACCESS

7
8
9 By:



10 _____
11 Chris Carson, Esq.
12 Attorney for plaintiff
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28